



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2022-0018]

Petition for Waiver of Compliance and Statutory Exemption

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 24, 2022, Canadian Pacific Railway (CP) and Union Pacific Railroad Company (UP) jointly petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). CP and UP also request an exemption from the requirements of title 49, United States Code (U.S.C.), section 20303, which states that a rail vehicle with defective or insecure equipment may be moved when necessary to make repairs to the nearest available place at which the repairs can be made. See 49 U.S.C. 20306. FRA assigned the petition Docket Number FRA-2022-0018.

Specifically, CP and UP request relief from 49 CFR 232.213, *Extended haul trains*; 232.15, *Movement of defective equipment*; and 232.103(f), *General requirements for all train brake systems*, and an exemption from the requirements of 49 U.S.C. 20303, for a potash unit train pair (CP train symbols 668 and 669), which are designated as extended haul trains, that operate between loading facilities in Saskatchewan, Canada, and the ports of Portland, Oregon, United States. The requested relief would allow technology-based advanced testing (the Automated Brake Effectiveness (ABE) Test Process) performed by wheel temperature detectors as an alternative approach to manual Class I brake tests performed by Certified Car Inspectors (Qualified Mechanical Inspectors). The tests would take place on westbound CP symbol 669 trains at the

designated inspection location in Lethbridge, Alberta, Canada. The petitioners state that the ABE Test Process is expected to provide more accurate brake testing, more proactive identification and repair of defects, and safer railway operations.

Petitioners also explain that on December 10, 2021, Transport Canada granted two exemptions to CP under the Canadian Railway Safety Act that permit the use of CP's Remote Safety Inspection Process (RSIP) and ABE Test Process as alternative practices to meet certain freight car safety and air brake inspections performed in Canada as required by Canadian rules. The ABE Test Process has been in existence in Canada for over ten years, and FRA has audited the process as part of its investigation of test waivers under Docket Numbers FRA-2016-0018 and FRA-2018-0049. FRA believes that the RSIP, by utilizing Certified Car Inspectors in near real-time oversight of the process, meets the requirements of § 232.213(a)(3), and does not require relief for this instance. Petitioners state that the train pair currently receives and will continue to receive all inspections in Canada by CP employees prior to interchanging to the UP, and US operations would not change.

FRA may grant an exemption from the requirements of 49 U.S.C. 20303 only on the basis of (1) evidence developed at a hearing; or (2) an agreement between national railroad labor representatives and the developer of the equipment or technology at issue. 49 U.S.C. 20306. FRA notes that the public hearing FRA previously held to address a similar request for exemption from UP (Docket Number FRA-2016-0018) addresses substantially the same issues as this current request. Thus, FRA believes a separate public hearing on the current request is unnecessary, and in considering the joint CP and UP request in this docket, FRA intends to rely on the findings of the hearing conducted in Docket Number FRA-2016-0018.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.
Issued in Washington, DC.

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Chief Safety Officer.